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part payment for new goods. *John Stember & Co. v. Keene* (Tex. Civ. App.), 152 S. W. 661.

Where there has been an alteration, or the memorandum forwarded does not state the conditions or terms of sale correctly, another aspect is presented. Such facts as those of the instant case seem seldom to have arisen. But the few times similar cases have arisen the courts have uniformly held like the instant one. Thus, a principal is bound by the terms of a contract to sell made by his agent, although these terms have been omitted or altered when the order is accepted by the principal. See *Patton-Worsham Drug Co. v. Stark* (Tex. Civ. App.), 89 S. W. 799. And in a very recent case the principal was bound by the conditions of sale made by an agent to solicit and forward orders, whether the conditions were attached when the order was received, or were detached by the agent before forwarding. *White Sewing Machine Co. v. Atkinson & Son*, 126 Ark. 204, 190 S. W. 111. It seems, on reason and authority, that the instant case is eminently sound.

WILLS—UNDUE INFLUENCE—BURDEN OF PROOF WHERE HUSBAND IS THE SCRIVENER OF THE WILL OF WHICH HE IS THE SOLE BENEFICIARY.—A husband and wife were living apart in order that he might secure more advantageous employment. There was no estrangement between them. The husband was recalled by the critical illness of his wife. At her request he wrote her will making himself sole beneficiary; which will was duly signed by the wife. Probate of the will was contested by the children. *Held*, the will is valid. *In re Spence's Estate* (Penn.), 102 Atl. 212.

Where a will is executed with the required formalities it is presumed to be a good will and the burden of proving undue influence is upon him who alleges such to be the fact. Undue influence to defeat a will must amount to a controlling mental restraint and coercion, destroying the free agency of the testator. *Wallen v. Wallen*, 107 Va. 131, 57 S. E. 596; *Coffman v. Hedrick*, 32 W. Va. 119, 9 S. E. 65; *Bulger v. Ross*, 98 Ala. 267, 12 South. 803. In some jurisdictions the proponent has the burden of proving that the will is the free and voluntary act of the testator. And undue influence does not shift the burden. But here the burden of proof is satisfied by introducing the will and the record of the probated will. *Sheehan v. Kearney*, 82 Miss. 688, 21 South. 41, 35 L. R. A. 102; *In re Holman's Estate*, 42 Or. 345, 70 Pac. 908.

The fact that a will is drawn by a legatee for his own benefit does not of itself raise a presumption of undue influence. It is merely a fact to be considered by the court along with other facts. In some cases it would have no weight at all. Thus, if it appear that the testator had testamentary capacity, that he dictated his will and knew its contents at the date of execution, and that it was executed in the statutory manner, the mere fact that the will was written by the sole beneficiary would not be enough, unless coupled with other extremely suspicious facts, to overthrow it, or, taken alone, to cast the slightest suspicion upon it. *Kirby v. Sellards*, 82 Kan. 291, 108 Pac. 73, 28 L. R. A. (N. S.) 270, 136 Am. St. Rep. 110, 20 Ann. Cas. 214. But where other suspicious circumstances are connected with such a fact there must be affirmative

proof that there was no undue influence. *Hughes v. Meredith*, 24 Ga. 325, 71 Am. Dec. 127; *Henry v. Hall*, 106 Ala. 84, 17 South. 187.

Again, the mere fact that a relation of trust and confidence exists between the testator and the beneficiary gives rise to no presumption of the exercise of undue influence. A testator's favor expressed in a will may be won by devoted attachment, kindness, and the beneficent administration of love and friendship. These influences are not undue. *Ginter v. Ginter*, 79 Kan. 721, 101 Pac. 634, 22 L. R. A. (N. S.) 1024; *In re Packer's Estate*, 164 Cal. 525, 129 Pac. 778. No presumption of undue influence arises from the fact that a husband is a beneficiary under his wife's will. *Armstrong v. Armstrong*, 63 Wis. 162, 23 N. W. 407. But see *In re Lockwood*, 80 Conn. 513, 69 Atl. 8, where a relationship of trust and confidence between the testator and the beneficiary was held to establish a presumption of undue influence. And in *Dudley v. Gates*, 124 Mich. 440, 86 N. W. 959, it was held that it was incumbent on the party who offers the will for probate under suspicious circumstances to satisfy the jury that it was not procured by undue influence. So, where the natural object of the testator's bounty is excluded from participation in his estate, and the will is in favor of the lawyer drawing it or a person occupying a clearly analogous position of trust, then the proponents of the will must disprove by a clear preponderance of evidence the affirmation of actual exercise of undue influence by such beneficiaries of the will. *St. Leger's Appeal*, 34 Conn. 434, 91 Am. Dec. 735; *Dale's Appeal*, 57 Conn. 127, 17 Atl. 757.